

Remarks and Arguments

Applicant has carefully considered the Office Action dated December 14, 2005 and the references cited therein. Applicant respectfully requests reexamination and reconsideration of the application.

Applicant acknowledges the examiner's rejection of selected claims under the judicially created doctrine of obviousness type double patenting and respectfully requests that such objection be held in abeyance until an indication allowable subject matter.

Claim 10-21, 24-29 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-5, 10-13, and 15 of U.S. Patent No. 6,623,491. Applicant respectfully requests that the examiner hold such rejection in abeyance until such time as allowable subject matter is indicated in the subject application.

Claims 10-18, 20-25 and 27-29 stand rejected under 35 USC 102(b) as being anticipated by US Patent 5,279,546, Mische et al., hereafter Mische, already of record. In setting forth the rejection, the Examiner has alleged that in Mische a fluid passage exists in between ornamental of two points defined by the law of the outer catheter in the wall you catheter.

Claim 10 has been amended and now specifically recites a treatment system comprising an outer member having a wall that defines a first lumen and an "inner member being received *within the first lumen of the outer member*" (claim 10, lines 5-6).

Claim 10 has been further amended to now recite "a fluid passage defined by the wall of the inner member and the wall of the outer member" (claim 10, lines 12-13). Using the examiner's own analogy of the claimed inner member being analogous to inner catheter 72 of Mische and the claimed outer member being analogous to the outer catheter 70 of Mische, the examiner has not shown where Mische discloses a fluid passage defined within the same lumen in which inner catheter 72 resides and which is defined by the wall of inner catheter 72 and the wall of outer catheter 70. The inner catheter 72 is not disposed within any of aspiration lumens 126, 128, 130, and 132 more within lumens 124 and 122. Nor is there a fluid passage defined within large central lumen 120 of

outer catheter 70 into which inner catheter 72 is snugly but slidably inserted (Mische; col. 5, lines 17-18; figure 5). Accordingly, applicant respectfully asserts that claim 10, and its respective dependent claims are not anticipated by Mische.

Claim 10 further specifically recites a treatment system comprising “a plurality of circumferentially spaced-apart structures disposed along a majority of the length of the fluid passage between the wall of the inner member and the wall of the outer member with the circumferentially space-apart structures spacing the wall of the inner member from the wall of the outer member” (claim 10, lines 14-17). Again, using the examiner’s own analogy of the claimed inner member being analogous to inner catheter 72, the claimed outer member being analogous to outer catheter 70, and the claimed plurality of circumferentially spaced-apart structures being analogous to septal areas 134, 136, 138 and 140 of Mische, the examiner has not shown where Mische discloses plurality of circumferentially spaced-apart structures (134, 136, 138, 140) disposed ... within the fluid passage, as now recited in claim 10. The septal areas 134, 136, 138 and 140 are integrally formed and completely defined *within* the wall of outer catheter 70 itself, not within large central lumen 120 of outer catheter 70 into which inner catheter 72 is inserted (Mische, figure 5). For such additional reasoning, applicant respectfully asserts that claim 10 and its dependent claims are not anticipated by Mische.

Claims 20 and 27 already include limitations similar to claim 10. Specifically, claim 20 in its current form recites “an elongated inner member...positioned within the lumen of the outer member, the inner member including *an outer* lumen-defining portion” (claim 20, lines 5-6) and “a plurality of circumferentially spaced-apart structures that extend between the lumen-defining portion of the inner member and the inner surface of the outer member” (claim 20, lines 9-12). In addition, claim 20 has been further amended to recites “a fluid passage defined by the outer lumen-defining portion of the inner member and the inner surface of the outer member” (claim 20, lines 7-8) and “a port in communication with the fluid passage” (claim 20, line 13). Claim 27 has been amended and now recites similar limitations (claim 27, lines 4, 6-7 and 13). Accordingly, claims 20 and 27, as well as their respective dependent claims, are likewise believed not anticipated by Mische for at least the same reasons as claim 10, as well as for the merits of their own respective limitations.

Claims 20 and 24-29 stand rejected under 35 USC 102(e) as being anticipated by US Patent 6,786,918, Krivoruchko et al., hereafter Krivoruchko. In a light of the previously described in the midst to claims 20 – 27, applicant's respectfully assert that claims 20 and 27, as well as their respective dependent claims, are not anticipated by Krivoruchko.

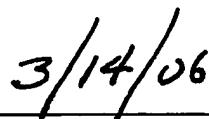
Regarding the rejection of claims 10-19 and 20-23 under 35 USC §103(a) as being unpatentable over US Patent 6,190,393, Bevier, already of record, in view of Krivoruchko, applicant respectfully reasserts all of the remarks and traversals set forth in prior response(s) to the extent still relevant to the outstanding rejections, in addition to the argument set forth above regarding the amendments to claims 10 and 20. Specifically, Bevier does not teach, disclose or suggest "*a fluid passage defined by the outer wall of the inner member and the inner wall of the outer member*" as now recited in claim 10, and similarly recited in claim 20. Nor does Bevier not teach, disclose or suggest "a port in communication with the fluid passage", as now recited in claims 10 and 20. Accordingly, applicant respectfully asserts that claims 10 and 20, and their respective dependent claims are patently distinct over the teachings of Bevier and Krivoruchko, whether considered singularly or in combination.

Applicants believe the claims are in allowable condition. A notice of allowance for this application is solicited earnestly. If the Examiner has any further questions regarding this amendment, she is invited to call Applicant's attorney at the number listed below. The Examiner is hereby authorized to charge any fees or credit any balances under 37 CFR §1.17, and 1.16 to Deposit Account No. 02-3038.

Respectfully submitted,



Date:



Bruce D. Jobse, Esq. Reg. No. 33,518
KUDIRKA & JOBSE, LLP
Customer Number 021127
Tel: (617) 367-4600 Fax: (617) 367-4656